



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

April 14, 2004

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7003 1010 0002 6364 3235

Jacqueline Ostrowski
Registered Agent for Hylander Automotive Services, Inc.
7921 S. Platte Canyon Rd.
Littleton, CO 80128

Re: Compliance Order and Administrative
Complaint under the Clean Air Act, 42
U.S.C. §§ 7413(a) and 7413(d)

Dear Ms. Ostrowski:

Enclosed are a Compliance Order ("Order") and an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint"), each of which the U.S. Environmental Protection Agency ("EPA") is issuing to Hylander Automotive Services, Inc. ("Hylander").

The Order alleges that Hylander has violated the provisions of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (the "CAA"), and EPA's regulations that pertain to servicing motor vehicle air conditioners. The order requires that Hylander comply with all requirements of Section 612 of the CAA, 42 U.S.C. § 7671k, and 40 C.F.R. part 82, subpart G. EPA is authorized to issue this order under section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B).

In accordance with section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), the Order will not take effect until Hylander has had an opportunity to confer with EPA concerning the findings set forth in the Order. As stated in the Order, the request for such a conference must be made no later than thirty (30) calendar days from the date of Hylander's receipt of the Order. A request for a conference must follow the procedures set forth in the Order.

Like the Order, the Complaint alleges that Hylander has violated the CAA and EPA's regulations. The Complaint proposes that EPA assess an administrative civil penalty of \$18,000 for these violations. The EPA is authorized to assess administrative civil penalties under section 113(d) of the CAA, 42 U.S.C. § 7413(d).



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Hylander has the right to a hearing to contest the allegations in the Complaint and/or the proposed penalty. We have enclosed a copy of 40 C.F.R. part 22, which identifies the procedures EPA follows in penalty assessments of this type. Please note the requirements for an answer to the Complaint in 40 C.F.R. part 22.15(b).

If Hylander wishes to contest any allegation in the Complaint and/or the penalty proposed in the Complaint, Hylander must file an answer within thirty days of receipt of the enclosed Complaint with the EPA Region 8's Regional Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th St., Suite 300
Denver, CO 80202-2466

If Hylander does not file an answer by the applicable deadline, it may be held in default. A default judgment may impose the full penalty proposed in the Complaint.

EPA encourages settlement of penalty proceedings at any time prior to a formal hearing, if the settlement is consistent with the provisions and objectives of the CAA and applicable regulations. If a mutually satisfactory settlement can be reached, it will be formalized in a Consent Agreement. Upon final approval of the Consent Agreement by the EPA's Presiding Officer, Hylander would be bound by the terms of the Consent Agreement and would waive its right to a hearing on, and any judicial appeal of, the agreed-upon civil administrative penalty.

Hylander has the right to be represented by an attorney at any stage of the proceedings, including any informal settlement discussion with EPA, but this is not required.

Please note that arranging for a settlement conference does not relieve Hylander of the need to file a timely answer to the enclosed Complaint.

Please be advised that the issuance of this Order and this Complaint does not preclude the initiation of civil or criminal actions in U.S. District Court for the violations cited in the Order, for any other violations that Hylander may have committed prior to or may commit after the issuance of the enclosed Order, or for any failure to comply with the terms of the Order itself.

We also have enclosed an information sheet entitled "U.S. EPA Small Business Resources," which notifies small businesses of their right under the Small Business Regulatory Enforcement and Fairness Act (SBREFA) to comment on regulatory enforcement activities and provides information on compliance assistance. EPA's dissemination of this information sheet does not necessarily mean that we have determined that your business is a small entity as defined by SBREFA.

If you wish to discuss settlement or have any questions, the most knowledgeable persons on my staff for technical and legal issues, respectively, are Cindy Beeler, Environmental Engineer, who can be reached at (303) 312-6204, and Peggy Livingston, Enforcement Attorney, who can be reached at (303) 312-6858.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk (with enclosures)
Dean Neely, CFC Program, CDPHE (with enclosures)

The United States Environmental Protection Agency (“EPA”) is issuing this Compliance Order (“Order”) in response to violations of the “Stratospheric Ozone Protection” requirements of Subchapter VI of the Clean Air Act (“CAA”), 42 U.S.C. § 7671 *et seq.*, and the “Protection of Stratospheric Ozone” regulations codified in 40 C.F.R. part 82.

1. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), authorizes the Administrator of the EPA to issue this Order. This authority has been duly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency (“EPA”), Region 8.

2. Consistent with section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), a copy of this Order is being sent to the Colorado Department of Public Health and Environment (CDPHE).

FINDINGS**Respondent**

3. The Respondent is Hylander Automotive Services, Inc.

4. At all times relevant to this action, the Respondent has been a corporation organized under the laws of the State of Colorado.

5. At all times relevant to this action, the Respondent's business has consisted primarily of repairing and/or servicing motor vehicles at one or more facilities, including a facility located at 7921 S. Platte Canyon Road, Littleton, Colorado, 80128. The Respondent has received payment for repairs and services it has performed.

6. At all times relevant to this action, the Respondent has been a "person" as that term is defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e), and 40 C.F.R. § 82.172.

Statutory/Regulatory Background

7. This case involves Section 612 of the CAA, 42 U.S.C. § 7671k. Section 612 is intended to help protect stratospheric ozone. Section 612 requires the EPA to evaluate and regulate substitutes for ozone-depleting substances in order to reduce overall risks to human health and the environment.

8. As required by Section 612(c) of the CAA, 42 U.S.C. § 7617k(c), the EPA has promulgated a rule codified in 40 C.F.R. part 82, subpart G, establishing the "Significant New Alternatives Policy" program, or "SNAP" program.

9. The SNAP Program is intended to identify substitutes for ozone depleting substances, where the substances are believed to present lower overall risks to human health and

the environment, and to prohibit using these substitutes in a way that would increase overall risks. 40 C.F.R. § 82.170(a).

10. The SNAP regulations, in 40 C.F.R. §82.174(c), prohibit using a substitute without adhering to any use restrictions set by an EPA acceptability decision, after the effective date of any rulemaking imposing such restrictions.

11. On June 13, 1995, EPA promulgated regulations identifying certain substitute refrigerants and specifying conditions for using them. These regulations became effective on July 13, 1995 and were codified in 40 C.F.R. part 82, subpart G, appendix B. Appendix B allows “HFC-134a” to substitute for “CFC-12” (also known as freon) in automobile air conditioners, whether retrofitted or as new equipment, subject to the conditions that

- HFC-134a must be used with unique fittings,
- HFC-134a must be used with detailed labels, and
- all CFC-12 must be removed prior to retrofitting.

Citizen Complaint

12. In February of 2003, a private citizen contacted CDPHE, stating that although the Respondent had converted air conditioning systems on two of his cars to the R-134a (same as HFC-134a) substitute in July 2002 and had charged him for two retrofit kits, he had since learned that the Respondent had neither changed the fittings to those unique to R-134a nor labeled his system as using R-134a.

13. In February of 2003, Dean Neely, a CDPHE inspector, analyzed the refrigerants in the above-mentioned citizen's two automobiles and determined that each contained R-134a, but that neither had the proper fittings or labels required for R-134a.

Follow-Up Investigation

14. In February of 2003, Mr. Neely asked the Respondent for invoices for all motor vehicle air conditioning retrofit work that the Respondent had performed during July, August, and September of 2002. In response, Mr. Neely received six invoices. Upon contacting the customers named on the invoices, he was told that two had since sold their vehicles. Of the four who indicated that they still owned the same vehicles, all had been charged by the Respondent for a retrofit conversion to R-134a, but none had the required unique fittings, three had no labels, and one had an incomplete label (which mentioned the name of Respondent's business but gave no indication that there had been a conversion to R-134a).

15. Of the six vehicles mentioned above (two belonging to the individual who first contacted CDPHE and the four mentioned in the additional invoices), none of the air conditioners had been serviced by any other facility since the work performed by Respondent.

16. A summary of the pertinent invoices, dates of service, and vehicles follows:

Date of Service	Invoice No.	Vehicle (Year, Make, Model)	Violation
7/02/02	8543	1992 Buick LeSabre	No unique fittings or labels
7/04/02	8554	1991 Honda Accord	No unique fittings; lack of detailed labeling; no indication on label of any conversion to R-134a

7/10/02	8584	1988 Toyota Camry LE	No unique fittings or labels
7/29/02	8678	1992 Jeep Cherokee Laredo	No unique fittings or labels
7/31/02	8699	1993 Infinity G20	No unique fittings or labels
8/12/02	8758	1991 Mercedes 300SE	No unique fittings or labels

17. Each of the six instances cited above in which the Respondent retrofitted a motor vehicle air conditioning system with HFC-134a without using the unique fittings required by 40 C.F.R. part 82, subpart G, Appendix B, is a violation of 40 C.F.R. § 82.174(c).

18. Each of the five instances cited above in which the Respondent retrofitted a motor vehicle air conditioning system with HFC-134a without using any label as required by 40 C.F.R. part 82, subpart G, Appendix B, is a violation of 40 C.F.R. § 82.174(c).

19. The instance cited above, in which the Respondent retrofitted a motor vehicle air conditioning system with HFC-134a but failed to use a detailed label as required by 40 C.F.R. part 82, subpart G, Appendix B is a violation of 40 C.F.R. § 82.174(c).

ORDER

20. Based upon the foregoing FINDINGS, and pursuant to the authority vested in the Administrator of the EPA by section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

21. Effective immediately, the Respondent shall comply with all the requirements of section 612 of the CAA, 42 U.S.C. §§ 7671k, and 40 C.F.R. part 82, subpart G.

ENFORCEMENT

22. Issuance of this Order does not preclude any other action by EPA to the violations that are the subject of this Order, or any other past or future violations of the CAA by Respondent, under any provision of law including, but not limited to:

- a. an administrative penalty complaint pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), for penalties of not more than \$27,500 per day of violation; or
- b. a civil action pursuant to section 113(b) of the CAA, 42 U.S.C. § 7413(b), for injunctive relief, or civil penalties of not more than \$27,500 per day for each violation, or both.

23. Pursuant to section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), failure to comply with this Order may lead to a civil action to obtain compliance or an action for civil or criminal penalties.

OPPORTUNITY FOR CONFERENCE

24. In accordance with section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), EPA hereby offers the Respondent an opportunity for a conference to discuss this Order. The request for such a conference must be made no later than thirty (30) calendar days from the date Respondent receives this Order. If Respondent wishes to make arrangements for a conference, it should contact:

Margaret J. (Peggy) Livingston
Enforcement Attorney (8ENF-L)

U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466
Telephone: (303) 312-6858

By offering the opportunity for a conference, EPA does not waive or limit its right to any remedy available under the CAA.

EFFECTIVE DATE

25. This Order shall become effective thirty (30) calendar days after Respondent's receipt of the Order, unless Respondent requests an opportunity to confer with EPA, in which case the Order shall become effective on the third business day after the conference unless EPA issues a modification to the Order.

Date: 4/7/04

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, Colorado 80202-2466

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing COMPLIANCE ORDER to:

Hylander Automotives Services, Inc.
7921 S. Platte Canyon Rd.
Littleton, CO 80128

Certified Return Receipt No: 7003 1010 0002 6364 3235

The original and one copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U. S. Environmental Protection Agency
999 18th Street, Suite 300 (8RC)
Denver, CO 80202-2466

Date: April 14, 2004

SIGNED

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**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON APRIL 14, 2004.**

bcc: Peggy Livingston, 8ENF-L
Cindy Beeler, 8ENF-AT
Reading File